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EXAMINER

MCCORMICK EWOLDT, SUSAN BETH

ART UNIT PAPER NUMBER

1654

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/777,359

**Applicant(s)**

RIZO, ANDRES MARMOLEJO

**Examiner**

Susan B. McCormick-Ewoldt

**Art Unit**

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>February 12, 2004</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

**Claims Pending**

Claims 1-9 will be examined on the merits.

**Claim Objections**

Claim 9 is objected to because of the following informalities: the term “soar” is misspelled. Appropriate correction is required.

**Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In claim 1(a), the term “major amount” is indefinite. What constitutes a “major amount” to meet this limitation? Clarification is needed.

In claim 1(a), the term “dilute” is indefinite. How dilute must the aqueous solution be to meet this limitation? Clarification is needed.

In claim 1(b) the recitation “group I” is unclear as to what metal carbonates are included in “group I.” Clarification is needed.

In claim 1(c) the recitation “significant amount” is indefinite as to what Applicant is meaning. Clarification is needed.

In claim 1(c) the recitation “amounts effective” is indefinite as to what Applicant is meaning. What amount of the composition must be effective to meet this limitation of the claim. Clarification is needed.

In claim 1(c) and claim 9, the recitation “substantial relief” is indefinite as to what Applicant is meaning. Clarification is needed.

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Claim 9 recites the limitation “the base” in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rajaiah *et al.* (US 6,514,484 B2) in view of Hughes *et al.* (US 6,08,171), Mussinan *et al.* (US 4,241,098) and Williams *et al.* (US 5,186, 926).

A medicinal composition comprising acetic acid, sodium carbonate and wintergreen mint to provide relief symptoms to the common cold, sore throat and skin rashes and blisters, is claimed. King's American Dispensatory (1898) discloses the synonyms for gum acacia which is also called gum arabica.

Rajaiah *et al.* (US 6,514,484 B2) discloses using acetic acid, wintergreen oil, baking soda (i.e. sodium carbonate), sweeteners and artificial flavorings in a composition (column 11, line 26; column 13, line 48; column 14, line 57; column 15, lines 12-14, 34; column 17, line 21). Rajaiah do not specifically disclose the composition in a form of tablets, pills, lozenges, syrup or salve or using gum acacia.

Hughes *et al.* (US 6,008,171) disclose using sodium carbonate and wintergreen oil in a composition that can be used in a liquid or tablet form (column 3, lines 31-32; column 6, lines 29-32; column 7, line 45).

Mussinan *et al.* (US 4,241,098) disclose using sweetening agents, gum arabic, vinegar (i.e. acetic acid), oil of wintergreen and sodium carbonate in a composition (column 7, lines 24, 52; column 8, line 3; column 10, line 31; EXAMPLE XXIV).

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Williams *et al.* (US 5,186, 926) specifically disclose the use of wintergreen mint in an oral composition such as in a tablet form (column 3, lines 3-5 and TABLE VII).

The references also do not specifically teach the ingredients in the amounts claimed by Applicant. The amount of a specific ingredient in a composition is clearly a result effective parameter that a person of ordinary skill in the art would routinely optimize. Optimization of parameters is a routine practice that would be obvious for a person of ordinary skill in the art to employ. It would have been customary for an artisan of ordinary skill to determine the optimal amount of each ingredient in order to best achieve the desired results. Thus, absent some demonstration of unexpected results from the claimed parameters, this optimization of ingredient amount would have been obvious at the time of Applicant's invention.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine vinegar, sodium carbonate and wintergreen oil, as discussed above for the following reasons. It is well known that it is *prima facie* obvious to combine two or more ingredients each of which is taught by the prior art to be useful for the same purpose.

It would clearly have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine an effective amount of vinegar, sodium carbonate and wintergreen oil, or an extract thereof, based upon the beneficial teachings provided by the cited references, as discussed above. The adjustment of particular conventional working conditions is deemed merely a matter of judicious selection and routine optimization, which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

#### Summary

No claim is allowed.

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Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Susan B. McCormick-Ewoldt whose telephone number is (571) 272-0981. The Examiner can normally be reached Monday through Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax number for the group is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

sbme

*Susan D. Coe*  
2-18-05  
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PATENT EXAMINER